

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**In re Patent Application:**

James Carl Schmidt

Serial No.: 10/636,069

Filed: 08/06/2003

For: PROTEIN ENHANCED LOW
CARBOHYDRATE SNACK FOOD

Confirmation No. 9856

Group Art Unit: 1761

Examiner: WEIER, ANTHONY J.

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. §1.132

I, James Carl Schmidt, being over the age of 18, hereby state and declare as follows:

1. I am the sole inventor of the subject matter claimed in U.S. Patent Application No. 10/636,069, entitled "PROTEIN ENHANCED LOW CARBOHYDRATE SNACK FOOD," filed 08/06/2003 ("the '069 application").
2. I have read the rejection of my patent claims by the U.S. Patent and Trademark Office relating to the Marsland published patent application, U.S. 2003/0091698.
3. I am a professional chef.
4. I followed the Marsland recipe in Example 13 of the published application to compare to the wafers described and claimed in the '069 application.
5. The Marsland instructions to prepare its high-protein dough called for mixing protein ingredients in the conventional order using conventional techniques. As a result, the Marsland dough was very gooey, dense and difficult to work with. It must be extruded; it cannot be pumped. After baking, the resultant Marsland cookie was also very dense. The cookie did not have a consistency favorable for use in a wafer application. It was difficult to eat, and not particularly tasty.

6. As in Marsland, conventional techniques of adding protein ingredients to wafer cookie batters tend to make the batter less manageable and the resulting wafer cookie less desirable in both consistency and taste. Certain protein ingredients tend to absorb water quickly; others less so. Indeed, even adding whole grain ingredients to a wafer cookie batter tends to make the batter stiff and results in an undesirable wafer cookie.

7. Nothing in Marsland teaches one of skill in the art, another professional chef, to carefully design a sequence of adding ingredients to maximize the stability of proteins in such a way that a high-protein wafer batter is light and fluid enough to be pumped into wafer pans and that, when baked, result in light wafer cookies that are high in protein but nevertheless of a desirable wafer consistency and taste.

8. Because teachings of Marsland do not suggest a departure from conventional methods, no modification of Marsland could lead to a light, airy high-protein wafer cookie as claimed in the present invention.

9. I further declare that all statements made on my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 11-11-05

Signature:

